

Boundary and Flowage Easement Management Policy  
Upper Wabash Project Office  
Louisville District  
1 Nov 2004

1. Purpose

The purpose of this policy is to document procedures for the reporting, resolution, and prevention of encroachments on fee and flowage easement property at J. Edward Roush Lake, Mississinewa Lake, and Salamonie Lake of the Upper Wabash Project. This policy is based on current practices and procedures intended to protect the integrity of the lakes and to ensure an objective approach to the resolution of encroachments and trespasses.

2. References

- a. ER 405-1-12, Real Estate Management
- b. Louisville District Boundary Marking Policy Statement.
- c. Louisville District Shoreline Management Policy Statement.
- d. Indiana DNR Group Dock Policy.
- e. Indiana DNR Property Regulations.
- f. Title 36 36CFR327, Rules and Regulations Governing Public Use of Corps of Engineers Water Resources Development Projects.

3. Encroachments and Trespasses

An encroachment is a structure or improvement built, installed, or established which interferes with the real estate interests of the United States. An encroachment has occurred where the structure or improvement extends over, across, in, under or upon lands in which the government owns a real estate interest and has not approved the structure or improvement.

A structure or improvement is a permanent or semi-permanent facility, such as a habitable dwelling, building, fence, deck, porch, barn, outhouse, permanent storage building, road, pond, leach field and septic tank, utility line, levee, excavation, placement of fill material, oil and gas well, mine entrance and tunnel.

A trespass is an unauthorized transient use and occupancy of fee owned lands. Such uses include, but are not limited to, livestock grazing, mowing, planting, cultivation and harvesting of crops, timber cutting and removal, trash disposal, private property storage, and other material storage.

#### 4. Flowage Easement

Flowage easement is a real estate interest that the Government acquired entitling the Government to store water on private property. The flowage easement estate specifies that no structures or improvements are allowed on flowage easement without permission from the Government except for fences. All other structures must be approved by the Government. An Application for Consent to Easement Structure must be completed and submitted to the appropriate lake office. An application is attached.

The flowage easement was purchased up to a specific elevation at each lake. The easement elevation is 5 feet above the emergency spillway floor, creating 5 feet of freeboard in case of a maximum design flood. Flowage easement also exists below Mississinewa and Salamonie Dams extending from the end of each emergency spillway to the Wabash River.

Flowage Easement is recorded on the deed in the year it was purchased. Each new deed will reference the easement, but the deed from the year the easement was purchased must be examined to find the total description of the Flowage Easement. All deeds are on record in the corresponding county courthouse.

The flowage easement agreement prohibits the construction of anything other than a fence without permission from the Corps of Engineers. Consents will be issued for certain types of structures that do not create a liability for the Government and do not have a negative impact on the right to store water on the property. Septic fields will be allowed if they are above the spillway floor elevation and are approved by the respective county sanitarian. Septic tanks must be constructed above the flowage easement elevation. Ponds are a structure and require a consent if in flowage easement. Placement or movement of fill on flowage easement to meet minimum elevation levels is prohibited. Permission is required for filling or excavating of soil.

Structures for human habitation will not be authorized in Flowage Easement. Walkout basement entrances in easement will be consented as long as they are above the spillway floor and properly recorded in the property deed at the county courthouse. Permanent structures will not be allowed below the spillway floor except for ponds.

It is the landowner's responsibility to determine the flowage easement boundaries based on the description recorded in the county courthouse. The best way to do this is with the services of a qualified surveyor. The Corps staff will mark their estimate of the easement when requested, but they are not registered surveyors and cannot be held responsible for errors. It is the landowner's responsibility to verify the Corps easement marking with a qualified surveyor. Flowage easement may not be shown on FEMA floodplain maps.

Flowage Easement is routinely inspected by Park Managers for unauthorized structures and activities.

#### 5. Fee Property

Fee property is property purchased and owned by the Government.

## 6. Boundary Marking

All fee property has been marked with concrete monuments at property corners, but occasionally those monuments are destroyed or illegally removed. There are also some inline concrete monuments. All monuments are marked by a steel or fiberglass post. These posts assist with finding the monuments and help to define the boundary line. The posts are usually a bright color to facilitate locating them. Close to adjacent houses, brown fiberglass posts may be used to mark each monument to decrease the visual obtrusiveness of a brightly colored post. While the Government makes every effort to identify its fee boundary, it is the responsibility of adjacent landowners to accurately locate their property boundary. The best way to do this is with the services of a qualified surveyor.

Damaging or removing monuments or posts is destruction of Government property and will be prosecuted in U.S. Federal Court. .

## 7. Vegetation Management

Alteration of live or dead vegetation on fee property is only allowed for fire protection of private structures. Live or dead vegetation includes grass, brush, trees, and dead wood on the ground. A maximum of 100 feet is allowed and is measured from private structures toward fee property. Although there is a 100 feet maximum, not every situation will warrant the maximum. All vegetation alteration must be approved by the Park Manager at each respective lake. Fire Protection Permits may be issued by the Corps.

No mowed trails are allowed on fee property except for trails to the two group docks at Mississinewa Lake. Each dock is allowed one trail across Government property. These trails may not exceed five feet in width.

Cutting of live or dead standing or downed timber for use off of the property is not allowed. Removal of downed dead timber may be authorized when a benefit to the Government can be demonstrated. When authorized, Firewood Permits may be issued by the Indiana Department of Natural Resources.

## 8. Shoreline Management

As stated in the Louisville District Shoreline Management Policy Statement, no shoreline management plan is required for the Upper Wabash Project Lakes because there was no private shoreline use as of December 13, 1974. The purpose of a shoreline management plan is to define what types of shoreline use is allowable at a specific lake. No private shoreline use is authorized at the Upper Wabash Project lakes.

The policy also states that any prior written commitments will continue to be honored provided they are actively maintained. Written commitments do exist for two group docks at Mississinewa Lake in the Somerset area. Since these docks were allowed to stay outside of policy, they are considered grandfathered. The important point is, to exist on Corps' property;

the docks need to be actively maintained. This includes following all Indiana DNR regulations pertaining to group dock permits. According to State regulations, at least six adjacent landowners must be included in the annual application and pay the necessary fees each year. To be considered actively maintained, a dock must be used yearly, meaning actually placed in the lake for use. If any requirements are not met, the dock would be considered not actively maintained.

The Corps' position is to encourage the use of the public facilities on the lake and to restrict the private development of the shoreline. According to Corps' policy for a grandfathered structure, once a grandfathered structure is no longer being actively maintained, it is removed from Corps records and cannot be reinstated. Grandfathered structures cannot change ownership and cannot change location. Since these docks are maintained by associations, the association maintaining each dock must stay the same, but the people in each association can change.

## 9. Enforcement

The general policy is to require removal of encroachments and trespasses, restoration of the premises, and collection of appropriate administrative costs and fair market value for the term of the unauthorized use. The lowest form of enforcement will be used to resolve encroachments or trespasses such as verbal requests or written warnings. If the lowest form of enforcement does not resolve the encroachment, Title 36 36CFR327 citations may be used. This may result in fines, court costs, and court appearances. Another possible form of enforcement may be to turn the encroachment over to the Real Estate Office of the Louisville District.

## 10. Specific Lake Information

### a. J. Edward Roush.

1. Flowage easement – 4,133 acres.  
Emergency spillway elevation – 798 feet above msl.  
Flowage easement elevation – 803 feet above msl.
2. Fee property – 8,628 acres.  
Length of boundary – 43 miles.  
Monuments - 606.
3. Contact information - U.S. Army Corps of Engineers  
J. Edward Roush Lake  
735 N. Warren Road  
Huntington, Indiana 46750  
260-356-8648

b. Mississinewa.

1. Flowage easement – 3,425 acres.  
Emergency spillway elevation – 779 feet above msl.  
Flowage easement elevation above dam – 784 feet above msl.  
Flowage easement elevation below dam – 655 feet above msl.
2. Fee property – 15,072 acres.  
Length of boundary – 78 miles.  
Monuments - 669.
3. Contact information - U.S. Army Corps of Engineers  
Mississinewa Lake  
5613 E Mississinewa Dam Road  
Peru, Indiana 46970  
765-473-5946.

c. Salamonie.

1. Flowage easement – 3,064 acres.  
Emergency spillway elevation – 793 feet above msl.  
Flowage easement elevation – 798 feet above msl.
2. Fee property – 11,968 acres.  
Length of boundary – 66 miles.  
Monuments - 599.
3. Contact information - U.S. Army Corps of Engineers  
Salamonie Lake  
1004 S Salamonie Dam Road  
Lagro, Indiana 46941  
260-782-2181 or 260-782-2358

11. Policy

This policy supersedes all previous boundary, flowage easement and shoreline management policies at J. Edward Roush Lake, Mississinewa Lake, and Salamonie Lake in the Upper Wabash Project.